

Rory Quintana (Cal. Bar No 258747)
rory@qhplaw.com
Ramsey Hanafi (Cal. Bar No. 262515)
ramsey@qhplaw.com
QUINTANA HANAFI, LLP
870 Market Street, Suite 819
Telephone: (415) 504-3121
Facsimile (415) 233-8770

Josh Sanford (Ark. Bar No. 2001037)
josh@sanfordlawfirm.com
Tess Bradford (Ark. Bar No. 2017156)
tess@sanfordlawfirm.com
SANFORD LAW FIRM, PLLC
One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040

Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 5:20-cv-7062

DANA DAHL, individually and on behalf of
all others similarly situated,

Plaintiff

v.

BAY POWER, INC., a California
Corporation, and DONNA BUTCHER, an
individual,

Defendant.

COLLECTIVE ACTION
COMPLAINT FOR FEDERAL
EMPLOYMENT LAW
VIOLATIONS; AND
CLAIMS FOR DAMAGES

COMES NOW Plaintiff Dana Dahl (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her attorneys Ramsey Hanafi of QHP Law, LLP, and Tess Bradford and Josh Sanford of Sanford Law Firm, PLLC, and for her Original Complaint—Collective Action (“Complaint”) against Defendants Bay Power, Inc., and Donna Butcher (collectively “Defendant” or “Defendants”), she does state and allege as follows:

PRELIMINARY STATEMENTS

1. Plaintiff, individually and on behalf of all others similarly situated, brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, and costs, including reasonable attorneys’ fees as a result of Defendants’ failure to pay Plaintiff and others a proper overtime compensation for all hours that Plaintiff and all others similarly situated worked.

2. Upon information and belief, for at least three years prior to the filing of this Complaint, Defendant has willfully and intentionally violated the FLSA as described, *infra*.

JURISDICTION AND VENUE

3. The United States District Court for the Northern District of California has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

4. Defendants conduct business within the State of California.

5. Venue lies properly within this Court under 28 U.S.C. § 1391(b)(1) and (c)(2), because the State of California has personal jurisdiction over Defendants, and Defendants therefore “reside” in California.

THE PARTIES

6. Plaintiff is an individual and resident and domiciliary of Tarrant County, Texas.

7. Separate Defendant Bay Power, Inc. (“Bay Power”), is a domestic, for-profit corporation.

8. Bay Power’s registered agent for service is Cindee M. Chaves, 1095 North 7th Street, San Jose, California 95112.

1 9. Separate Defendant Donna Butcher (“Butcher”) is an individual and resident of
2 Texas.

3 10. Defendants maintain a website at <https://www.baypower.com/>.

4 **IV. FACTUAL ALLEGATIONS**

5 11. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though
6 fully incorporated in this section.

7 12. Butcher is a principal, director, officer, and/or owner of Bay Power.

8 13. Butcher, in her role as an operating employer of Bay Power, had the power to hire
9 and fire Plaintiff, often supervised Plaintiff’s work and determined her work schedule, and made
10 decisions regarding Plaintiff’s pay, or lack thereof.

11 14. Butcher took an active role in operating Bay Power and in the management thereof.

12 15. Butcher, at relevant times, exercised supervisory authority over Plaintiff in relation
13 to her work schedule, pay policy and the day-to-day job duties that Plaintiff’s jobs entailed.

14 16. Butcher acted as the employer of Plaintiff and the proposed collective and is and has
15 been engaged in interstate commerce as that term is defined under the FLSA.

16 17. Bay Power acted as the employer of Plaintiff and the proposed collective and is and
17 has been engaged in interstate commerce as that term is defined under the FLSA.

18 18. Defendants have unified operational control and management, as well as control
19 over employees, including shared power to supervise, hire and fire, establish wages and wage
20 policies and set schedules for their employees through unified management.

21 19. During each of the three years preceding the filing of this Complaint, Defendant
22 employed at least two individuals who were engaged in interstate commerce or in the production
23 of goods for interstate commerce, or had employees handling, selling, or otherwise working on
24 goods or materials that had been moved in or produced for commerce by any person.

25 20. Defendant’s annual gross volume of sales made or business done was not less than
26 \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated) during each of
27 the three calendar years preceding the filing of this complaint.

1 21. At all times material herein, Defendant was an “employer” of Plaintiff within the
2 meaning of the FLSA.

3 22. At all times material herein, Defendant classified Plaintiff as non-exempt from the
4 overtime requirements of the FLSA and paid him an hourly wage.

5 23. At all times material herein, Plaintiff and those similarly situated have been entitled
6 to the rights, protections and benefits of the FLSA.

7 24. Defendant is primarily involved in selling electrical components.

8 25. Defendant employed Plaintiff from January of 2017 to June of 2020.

9 26. Specifically, Defendant employed Plaintiff as an Inside Sales Representative.

10 27. Defendant also employed other individuals to work as Inside Sales Representatives.

11 28. Plaintiff was paid an hourly rate.

12 29. In addition to her hourly rate, Plaintiff was paid commission based on how many
13 sales she made.

14 30. Plaintiff also occasionally received bonuses based on nondiscretionary criteria such
15 as working a weekend shift.

16 31. Upon information and belief, other Inside Sales Representatives were paid in the
17 same or similar manner.

18 32. Defendant informs its Inside Sales Representatives of the opportunity to earn
19 commission and bonuses upon hiring because the commission and the bonuses are part of
20 Defendant’s compensation package and Inside Sales Representatives expect to receive commission
21 and bonuses.

22 33. At all relevant times herein, Defendant directly hired Inside Sales Representatives
23 to work in its offices, paid them wages and benefits, controlled their work schedules, duties,
24 protocols, applications, assignments and employment conditions, and kept at least some records
25 regarding their employment.

26 34. As an Inside Sales Representative, Plaintiff’s duties included answering phone calls,
27 responding to client queries regarding products, and selling products.

1 35. Plaintiff regularly worked in excess of forty hours per week while working for
2 Defendant.

3 36. Upon information and belief, other Inside Sales Representatives regularly or
4 occasionally worked over forty hours per week.

5 37. During weeks in which Plaintiff and other Inside Sales Representatives worked over
6 forty (40) hours, Defendant paid an improper overtime rate because Defendant determined the
7 regular rate of pay solely based on employees' hourly rate, without including the value of the
8 commissions that Defendant provided to Plaintiff and similarly situated employees.

9 38. Section 778.117 of Title 29 of the CFR states that commissions "are payments for
10 hours worked and must be included in the regular rate," regardless of the basis for them or their
11 frequency.

12 39. Section 778.208 of Title 29 of the CFR requires that all forms of compensation, such
13 as non-discretionary bonuses, "must be totaled in with other earnings to determine the regular rate
14 on which overtime pay must be based."

15 40. Therefore, Defendant violated the FLSA by not including all forms of
16 compensation, such as commissions and non-discretionary bonuses, in the regular rate when
17 calculating Plaintiff's and other Inside Sales Representatives' overtime pay.

18 41. Upon information and belief, Defendant's pay policy was the same at all of its
19 locations.

20 42. At all relevant times herein, Defendant has deprived Plaintiff and other Inside Sales
21 Representatives of proper overtime compensation for all of the hours worked over forty (40) per
22 week.

23 43. Defendant knew or showed reckless disregard for whether its actions violated the
24 FLSA.

25 **REPRESENTATIVE ACTION ALLEGATIONS**

26 44. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though
27 fully incorporated in this section.

68. Defendant violated Section 778.117 of Title 29 of the CFR by not including commissions paid to Plaintiff in her regular rate when calculating her overtime pay.

69. Defendant violated Section 778.208 of Title 29 of the CFR by not including bonuses paid to Plaintiff in her regular rate when calculating her overtime pay.

70. Defendant failed to pay Plaintiff an overtime rate of 1.5x her regular rate for all hours worked over forty in a week.

71. Defendant's conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

72. By reason of the unlawful acts alleged in this Complaint, Defendant is liable to Plaintiff for, and Plaintiff seeks, unpaid overtime wages, liquidated damages, and costs, including reasonable attorney's fees as provided by the FLSA.

73. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

SECOND CLAIM FOR RELIEF
(Collective Action Claim for Violation of the FLSA)

74. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

75. Plaintiff brings this collective action on behalf of herself and all hourly Inside Sales Representatives who were employed by Defendant and received commission, to recover monetary damages owed by Defendant to Plaintiff and members of the putative collective for overtime compensation for all the hours she and they worked in excess of forty (40) each week.

76. 29 U.S.C. § 207 requires employers to pay employees 1.5x the employee's regular rate for all hours that the employee works in excess of 40 per week.

77. Defendant violated 29 U.S.C. § 207 by not paying Plaintiff and similarly situated employees a proper overtime rate of compensation for all hours worked in excess of 40 per week.

1 89. Certification of, and proper notice to, together with an opportunity to participate in
2 the litigation, all qualifying current and former employees;

3 90. Judgment for damages for all unpaid overtime wage compensation owed under the
4 FLSA and the attendant regulations;

5 91. Judgment for liquidated damages under the FLSA and the attendant regulations;

6 92. For a reasonable attorney's fee, costs and interest; and

7 93. Such other relief as this Court may deem just and proper.

8
9 Respectfully submitted,

10
11 DANA DAHL, Individually and on Behalf of All
12 Others Similarly Situated, PLAINTIFF

13 QHP Law, LLP
14 870 Market Street, Suite 819
15 San Francisco, California 94102
16 Telephone: (415) 504-3121
17 Facsimile: (415) 233-8770

18 /s/Ramsey Hanafi
19 Ramsey Hanafi
20 Cal. Bar No. 262515
21 ramsey@qhplaw.com

22 SANFORD LAW FIRM, PLLC
23 One Financial Center
24 650 South Shackleford, Suite 411
25 Little Rock, Arkansas 72211
26 Telephone: (501) 221-0088
27 Facsimile: (888) 787-2040

28 /s/ Josh Sanford
Josh Sanford
Ark. Bar No. 2001037
josh@sanfordlawfirm.com
Motion for PHV Forthcoming

/s/ Tess Bradford
Tess Bradford
Ark. Bar No. 2017156
tess@sanfordlawfirm.com
Motion for PHV Forthcoming